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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR SUE SOTTILE
ACTING EARNED INCOME TAX CREDIT
PROGRAM MANAGER
W:CAR:SPEC:2132/IR

Attn: David Riley

FROM:

D. Welch
Donna Welch, Senior Counsel
CC:PA:APJP

SUBJECT:

Use of Data From the Federal Parent Locator Service

This memorandum responds to your inquiry dated July 9, 2002, regarding the Service's access to data in the National Directory of New Hires (NDNH), a database that is part of the Department of Health and Human Services' (HHS) Federal Parent Locator Service.

Pursuant to 42 U.S.C. § 653(i)(3), Congress granted the IRS/Treasury access to the NDNH. That section states:

The Secretary of the Treasury shall have access to the information in the National Directory of New Hires for purposes of administering section 32 of the Internal Revenue Code of 1986, or the advance payment of the earned income tax credit under section 3507 of such Code, and verifying a claim with respect to employment in a tax return.

You requested advice on the intended meaning of the phrase "verifying a claim with respect to employment in a tax return." There are two possible interpretations of what Congress intended by this language and the scope of IRS/Treasury access to, and use of information from, the NDNR: (1) the Service may access the NDNH for purposes of verifying claims with respect to employment in tax returns only in connection with administering the Earned Income Tax Credit (EITC) and the Advance payment of EITC; or (2) the Service may access the NDNH for any tax administration purpose involving verification of a claim with respect to employment on a return whether or not EITC or Advance payment of EITC is involved.

The legislative history indicates that the narrower interpretation of this phrase was intended.

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Legislative History of 42 U.S.C. § 653(i)(3)

Section 653(i)(3) was enacted as part of the Professional Responsibility and Welfare Opportunities Reconciliation Act of 1996 (PRWORA). There is very little legislative history that sheds light on the intended scope of the Service's access to this database. The Conference Committee Report, however, seems to indicate that the Service's access to the NDNH was meant to be limited. The report states, "The Secretary of the Treasury must have access to information in the Federal Directory of New Hires for the purpose of administering section 32 of the Internal Revenue Code and the Earned Income Credit." H.R. Conf. Rep. 104-725, at 348 (1996). The report fails to even mention the Advance payment of EITC, which is specifically included in the statutory language. Four predecessor bills, none of which were enacted, contained identical statutory language to PRWORA.¹ The Conference Report for H.R. 4 had explanatory language identical to that of the PRWORA Conference Report.²

In addition to researching the legislative history, we have talked to various offices that worked on the cited bills to try to determine the intended scope of IRS/Treasury access to the NDNH. Treasury's Office of Tax Policy reported that the Administration, in particular the Office of Management and Budget (OMB), supported Treasury access to NDNH in the hope that it would help in EITC enforcement. In particular, it was thought that NDNH data would provide more current information on employment status and earnings than the Underreporter Program (URP), and thus, could be used to verify certain eligibility criteria for the EITC more quickly. In contrast to the Federal Case Registry of Child Support Orders (a separate HHS database to which IRS has access for specified tax administration purposes), neither IRS/Treasury nor OMB had a more specific plan as to how the NDNH would be used at the time of enactment.

In order to obtain access to, and use the information from, the NDNH, the Service would be required to enter into a Memorandum of Understanding (MOU) with HHS. In developing this MOU, the Service and HHS would need to reach an agreement as to the scope of the Service's access to the NDNH and the intended use of the information obtained by the Service. In crafting the MOU, the Service and HHS should specifically address whether the NDNH may be used by the Service in verifying a taxpayer's wage reporting on a tax return, as well as any other intended use of the information from the database.

¹ H.R. 4 § 316(i)(3); H.R. 2491 § 12316(i)(3); S. 1120 § 916(i)(3); H.R. 1214 § 716(i)(3), 104th Cong. (1995). Similar language also appeared in S. 1117, which similarly did not reach the Senate floor for a vote.

² H.R. Rep. 104-430, at 410 (1995).

Finally, we note that the House Appropriations Committee Report on the fiscal year 2003 Treasury and IRS appropriations bill was passed by the House on July 24, 2002. In this report, the committee directed the Service to apply resources from the Tax Law Enforcement and the EITC Compliance Programs in the "most efficient and effective way possible to strengthen voluntary compliance while reducing tax cheating, tax fraud, tax scams, and other non-compliance problems among all population segments."

H.R. 107-575 (2002). This Congressional emphasis on broad EITC compliance activity may be helpful to the Service if it wishes to pursue access to NDNH for compliance purposes.

We hope this has been helpful. If you have any questions, please contact either Lynnette Platt in DPL at (202) 622-4590 or Rob Desilets, Jr. in APJP at (202) 622-7889.